

62 Box 17 - JGR/(Department of Justice) DOJ Daily Reports (5) -
Roberts, John G.: Files SERIES I: Subject File



U.S. Department of Justice
Office of the Deputy Attorney General

10/4

To: John Roberts
Associate Counsel to the
President
The White House

From: Roger Clegg RC

Per our conversation earlier today, here is the draft press release in the Alcan-Arco matter. The current plan is to announce this Friday morning. As we discussed, however, we don't want anything to get out prematurely because of the effect it may have on stock prices, so please check with me before anyone over there makes a public comment.

Many thanks.

P.S. Cathy Anderson says you are even cuter than Ted Olson.

erson says you are even
an Ted Olson.

*file - Daily DOT
reports*

FOR IMMEDIATE RELEASE
FRIDAY, OCTOBER 5, 1984

AT
202-633-2016

The Department of Justice today filed a proposed consent decree that would settle a civil antitrust suit -- filed simultaneously -- challenging the planned acquisition by Alcan Aluminium Limited of Canada of most of the ^{aluminum producing} assets of Atlantic Richfield Company.

The suit and proposed decree were filed in U.S. District Court in Louisville, Kentucky. The decree will become final upon following a 60-day approval by the court, following a 60-day period for public comment.

The suit alleges that the acquisition may substantially lessen competition in the market for aluminum can body stock by eliminating Arco as an important prospective entrant into that market. Aluminum can body stock is a sheet product used to make the bodies of beverage cans. According to J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, the proposed consent judgment would require Arco or its successor to retain a 60 percent interest in Arco's newly-completed rolling mill, located in Logan County, Kentucky, and designed to produce can stock.

Alcan would be permitted to acquire a 40 percent interest in the facility as part of a production joint venture.

McGrath said that the decree will preserve Arco, or its successor, as a significant and independent new entrant into the can body stock market.

Alcan, headquartered in Montreal, Canada, is the non-Communist world's largest aluminum company. It engages in all phases of aluminum production, including the mining and processing of bauxite -- the ore from which aluminum is refined -- the smelting of primary aluminum, and the fabrication of finished and semi-finished aluminum products. Its sales in the United States accounted for approximately one quarter of Alcan's total 1983 revenues of \$5.2 billion.

Los Angeles. Arco, headquartered in Los Angeles, California, is primarily the aluminum company. In 1977, Arco entered the aluminum industry when it acquired the Anaconda Aluminum Company of Louisville,

Kentucky. Arco's aluminum operations contributed approximately \$718 million of the company's total 1983 revenues of \$26 billion.

On January 5, 1984, the companies announced that Alcan had agreed to buy most of Arco's aluminum assets for between \$600 million and \$1 billion. Among the assets to be transferred were a primary aluminum smelter in Sebree, Kentucky; a newly-completed rolling mill in Logan County, Kentucky; older rolling mills in Louisville, Kentucky, and Terre Haute, Indiana; and a 25 percent interest in an Irish alumina refinery. Alumina is a mid-product in the refining of aluminum from bauxite.

On June 19, 1984, following an extensive investigation, the Department of Justice announced that it would oppose the

transaction as violative of Section 7 of the Clayton Act if consummated as originally structured.

The companies then requested an opportunity to meet with Department officials to discuss proposals for restructuring the transaction and agreed to postpone its completion. Subsequent negotiations produced the agreement announced today.

In explaining the basis for the Department's opposition to the original transaction, McGrath observed that:

"The production of can body stock, which is one of the largest and most important segments of the aluminum business, is highly concentrated.

...est producers last year the four largest producers of can body stock accounted for 87.9 percent of all sales in the United States, including sales by foreign producers. The Herfindahl-Hirschman Index (a measure of industry concentration obtained by adding the squares of the market shares of all firms in the market) was approximately 2300. The Antitrust Division's Merger Guidelines consider anything over 1800 to be 'highly concentrated' and subject to the most stringent antitrust scrutiny.

"Last year Alcan was the fourth largest producer of can body stock with 13.5 percent of total shipments. Arco has not previously made can stock, but it recently completed construction of a large, modern rolling mill in Logan County, Kentucky, designed to produce can stock. Based on

the new plant's capabilities and Arco's plans for its utilization, it was clear that Arco would have become a significant new entrant into the can body stock market except for this acquisition.

"Under the proposed decree the companies would enter into a cost-sharing production joint venture. Arco would have a 60 percent undivided interest and Alcan a 40 percent undivided interest in the Logan County mill. A separate management company would be created to operate the plant and would be owned 60 percent by Arco and 40 percent

by Alcan, with Arco designating a majority of the use of the plantboard of directors. Use of the plant's production capacity would also be on a 60 percent/40 percent basis. Each company is guaranteed the right to initiate and participate in further expansions of the plant's capacity, including the right to expand the plant unilaterally if the other declines to participate.

"The decree and the accompanying joint venture agreements contain a variety of provisions designed to ensure that the joint venture partners remain independent competitors. Unlike many joint ventures, this one is strictly limited to operation of the plant as a cost center rather than as a profit center. Each company is solely responsible for determining its own product mix

and level of output, and each must independently market its share of the plant's output. The companies are prohibited from exchanging information concerning competitively sensitive subjects such as prices, customers, and marketing plans, and from agreeing on price or output. The partners may not sell each other more than minimal amounts of the plant's production and are restricted in their ability to transfer production rights to each other. Two of the seven members of the board of directors must be otherwise

and Arco. Unaffiliated with Alcan and Arco. Likewise, no employee of the management company may be employed by Alcan or Arco.

"The decree would be in effect for 10 years following its entry by the court. During that period Alcan and the other major aluminum producers would be barred from acquiring Arco's interest in the Logan County plant."

McGrath said he considered this case and proposed settlement significant in two respects:

"First, this case involves a challenge under Section 7 of the Clayton Act to an acquisition involving a potential rather than an existing competitor in the can body stock market. It is the first potential competition case brought by the Department of Justice in recent years. The

standards applied by the Department are those set forth in the potential entrants section of the Antitrust Division's Merger Guidelines.

"Second, the use of a production joint venture as a means of settling a Section 7 case is, I believe, an innovation. While this approach should not be viewed as a precedent for the settlement of future cases, particularly where the challenged acquisition is of an existing rather than a prospective competitor, it did offer a reasonable and procompetitive solution in the unusual circumstances of this case. In my view it accomplishes several important objectives.

It preserves Arco or its successor as an independent and meaningful new participant in the can body stock market. If all of Arco's production at the Logan County plant were devoted to can body stock, it would become the fifth largest producer, surpassing three companies already in the market, with a market share of approximately 8.6 percent based on 1983 sales.

"The joint venture arrangement also allows Arco or its successor to expand its production of can stock or other rolled aluminum products by expanding the plant's capacity, either in conjunction with Alcan, in which case they would share in the increased capacity, or on its own, if

Alcan declines to participate. The Logan County plant is the only aluminum rolling mill built in this country for over a decade. It is a highly efficient, state-of-the-art facility designed to be easily expanded to several times its current capacity. The joint venture thus preserves Arco's or its successor's potential for growth in this market.

"In addition, the parties have claimed that Alcan's participation in this joint venture will enable them to bring the plant up faster and

efficiently than would operate it more efficiently than would be the case operating it. The if Arco alone were operating it. The joint venture agreement specifically provides for both

parties to contribute their technology and expertise to the operation of the new mill. If this does increase the plant's efficiency, the joint venture will permit the parties and, ultimately, consumers to realize this benefit while still preserving Arco as an independent entrant."

McGrath stated that the Department reviewed other aspects of the proposed transaction and concluded there was insufficient basis for including any other markets in the complaint and settlement. The proposed decree would allow the parties to proceed with the remainder the acquisition as originally planned.

In accordance with the Antitrust Procedures and Penalties Act of 1974, a competitive impact statement has been filed with the court explaining the proposed decree. Copies of the complaint, proposed final judgment, and competitive impact statement are available on request from the Antitrust Division's Legal Procedure Unit, Room 7416, Department of Justice, Washington, D.C. 20530. They will also be available for inspection in the office of the Clerk of the United States District Court for the Western District of Kentucky.

Comments to the Department and to the court regarding the judgment are invited from members of the public. They should be

Assistandirected to Steven C. Douse, Assistant Chief, General Litigation
United States Section, Antitrust Division, United States Department of Justice,
Washington, D.C. 20530.

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U.S. Department of Justice
Office of the Deputy Attorney General

10/5

To: John Roberts

From: Roger Clegg

F.Y.I.

Ramirez de Arellano v. Weinberger, No. 83-1950 (D.C. Cir.,
Oct. 5, 1984) (en banc)

On a 6-4 vote, the District of Columbia Circuit has reinstated a lawsuit challenging American and Salvadoran military use of private property in Honduras. An American citizen is the sole owner of the corporations which hold title to the Honduran property. His suit seeks injunctive and declaratory relief against American military officials on the ground that military use of his property violates the Due Process and Just Compensation Clauses of the Constitution, and also is unauthorized by American law. The district court dismissed the suit as a non-justiciable political question. A 2-1 panel of the court of appeals affirmed on the ground that "equitable discretion" prevented judicial intervention. On rehearing en banc, however, the full court of appeals now has remanded the case to the district court for discovery and possibly a trial.

In an extremely lengthy opinion by Judge Wilkey, the court of appeals concluded that plaintiffs' allegations were sufficient to survive a motion to dismiss. The court rejected, with the case in its current posture, the government's various claims that the political question, equitable discretion, standing, and act of state doctrines required dismissal of this lawsuit. The court questioned as a legal matter whether there was any legal authority for the United States' actions in using American-owned private property in Honduras for military training. The court also viewed as a disputed factual issue the question whether Honduras had ratified the United States' actions and was willing to pay compensation for use of the private property. The court seemingly left open the possibility of summary judgment for the government upon a persuasive factual and legal showing.

Four judges dissented in three separate, and sharply-worded, opinions. We currently are studying the various opinions in this case to determine whether we should seek Supreme Court review or simply accept the remand and attempt to prevail in the district court.

Arco Plans to Sell Remainder of Metal Unit

LOS ANGELES, Oct. 8 (AP) — The Atlantic Richfield Company, which last week won Justice Department approval to sell most of its aluminum operations to a Canadian concern, said today that it hopes to finish selling off its metals unit "in four months to a year."

The Los Angeles-based Arco has sent out about 800 brochures to prospective buyers "and we have had some very serious inquiries," said John Calcaterra of the Arco Metals Company. But he said it would be a long process to select a buyer and get the necessary approvals.

The company announced in July that it intended to divest itself of its

entire metals division, which last year had sales of about \$1.5 billion, or 5 percent of Arco's total revenues.

On Friday, the Justice Department approved the sale of Arco's aluminum operations to Alcan Aluminum Ltd. of Montreal with the proviso that a portion of the deal be handled as a joint venture instead of a sale.

Before the revision, the deal had been valued at \$600 million. No figure on the revised deal was available.

Today Arco said it had retained Lehman Brothers to represent the company in the sale of its American Brass and Wisconsin Centrifugal units. Those two units, along with aluminum operations excluded from

the Alcan deal, make up the remainder of Arco's metals operations. Sale of those aluminum operations will be handled directly by Arco, the company said.

Mr. Calcaterra declined to say what price Arco was seeking for the remaining metals units.

American Brass is the nation's largest producer of copper and copper alloy mill products for the construction, machinery, equipment, electrical and transportation industries. It has plants in Buffalo, Waterbury, Conn., Franklin, Ky., Kenosha, Wis., and Paramount, Calif.

Wisconsin Centrifugal, based in Waukesha, Wis., is a leading producer of large centrifugal castings for the military, chemical and power-generation industries.

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U.S. Department of Justice
Office of the Deputy Attorney General

10/20

To: John Roberts
Associate Counsel to the
President

From: Roger Clegg

F.Y.I.



U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 18, 1984

MEMORANDUM

TO: William French Smith
Attorney General

FROM: F. Henry Habicht II *F. Habicht*
Assistant Attorney General

SUBJECT: Proposed Cleanup Strategy
Department of the Army - Rocky Mountain Arsenal

I wanted to inform you that next Tuesday, the Army and EPA will announce agreement on a conceptual plan for cleaning up the Rocky Mountain Arsenal, near Denver. As you recall, this is probably the most massive hazardous waste site in the country and is the subject of litigation in which the Army has sued Shell, and Colorado has sued both the Army and Shell. The Arsenal is adjacent to Stapleton Airport and since 1942 has been used for the production of chemicals and munitions. Much of the work which took place on the Arsenal was handled under contract by Shell, which also produced pesticides at the site.

As a result of these operations, some 19 square miles of the Arsenal have become contaminated by improperly disposed hazardous waste. Chemicals were disposed in unlined landfills which have subsequently leaked and threaten groundwater aquifers in the area. Both our action against Shell and Colorado's action against the Army are designed to secure the cleanup and stabilization of the Arsenal site.

The Army has developed a proposed remedial plan to take care of the problem. Essentially, the Army proposes to excavate and create a secure landfill on the Arsenal of approximately one square mile in which waste removed from other parts of the Arsenal could be deposited. They also propose some waste incineration and purification of groundwater at the Arsenal's perimeter. While more engineering and analysis remains necessary, preliminary estimates indicate that the proposed remedy will take approximately 15 years to implement and ultimately cost \$350 - 400 million.

On October 22 and 23 the Army and EPA plan a series of briefings in Denver for the Colorado Congressional Delegation, the Governor's office, county and city officials and the press. The purpose of these briefings is to solicit comments and win support from various levels of government and the public.

From our perspective, having a concrete clean-up proposal should help facilitate settlement. The U.S. Attorney, Bob Miller, and I will brief the Colorado Attorney General and counsel for Shell. We will also ensure that Army and EPA comments do not stray into litigation-sensitive areas. Our public affairs office is in close coordination with those at the Army and EPA.

This proposal shows real progress in dealing with this massive site and should be publicly well-received, unless the State criticizes it. John Marsh and Bill Ruckelshaus will call Governor Lamm on Monday to try to win his support. Let me know your thoughts regarding our role in this or any questions you may have.

cc: ~~Carol~~ E. Dinkins
Deputy Attorney General

Tex Lezar
Counselor to the Attorney General &
Assistant Attorney General for Legal Policy

Robert A. McConnell
Assistant Attorney General
Office of Legislative and Intergovernmental
Affairs

Thomas P. DeCair
Assistant Attorney General
Office of Public Affairs

THE WHITE HOUSE

WASHINGTON

October 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Indictment Announcement

Associate Deputy Attorney General Roger Clegg advises that the Attorney General will announce today at 2:00 p.m., in New York, the indictment of essentially the entire leadership of the Colombo organized crime family. The 51-count indictment charges extortion, mob-control of various unions, embezzlement of union funds, heroin trafficking, multi-million dollar thefts, gambling, loan-sharking, and a variety of other illegal activities. The indictment covers all three Colombo family "bosses" of the past ten years, as well as four high-ranking "capos." Justice has sent over a copy of the Attorney General's statement; the attached memorandum gives Mike Baroody a "heads up."

Attachment

THE WHITE HOUSE
WASHINGTON

October 24, 1984

MEMORANDUM FOR MICHAEL E. BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Original signed by RAH for FFF

SUBJECT: Indictment Announcement

Today at 2:00 p.m. the Attorney General will announce, in New York, the indictment of the leadership of the Colombo organized crime family. The 51-count indictment charges a variety of offenses, including extortion, mob-control of unions, embezzlement of union funds, heroin trafficking, theft, gambling, and loan sharking. It covers the three bosses of the family over the past ten years as well as four high-ranking "capos."

Attachment is a copy of the statement the Attorney General will make; it should be held until 2:00 p.m.

Attachment

FFF:JGR:aea 10/24/84 ✓
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 24, 1984

MEMORANDUM FOR MICHAEL E. BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Indictment Announcement

Today at 2:00 p.m. the Attorney General will announce, in New York, the indictment of the leadership of the Colombo organized crime family. The 51-count indictment charges a variety of offenses, including extortion, mob-control of unions, embezzlement of union funds, heroin trafficking, theft, gambling, and loan sharking. It covers the three bosses of the family over the past ten years as well as four high-ranking "capos."

Statement of the Attorney General
held until 2:00 p.m.
Attached is a copy of the statement the Attorney General will make; it should be held until 2:00 p.m.

Attachment

FFF:JGR:aea 10/24/84
cc: FFFielding/JGRoberts/Subj/Chron

10/24/84

Today a federal grand jury in Manhattan has indicted the entire leadership of the Colombo Family, one of this city's five organized crime families. The federal indictment charges massive racketeering offenses, including widespread extortion in the construction and restaurant industries.

The 51-count federal indictment charges extortion and payoffs, mob control of key labor unions, embezzlement of union funds, trafficking in heroin and other drugs, multi-million dollar thefts, illegal gambling, loansharking, and bribery. Named in the indictment are 11 leaders, members and associates of the Colombo Family, including all three of the "bosses" who have controlled or directed the Family's illegal activities over the last ten years, as well as four of the high-ranking "capos."

The case is unique because it reveals an organized crime family's deep infiltration into major portions of this city's economy. The indictment charges that the Colombo Family controls no fewer than seven key union organizations -- specifically identified in the indictment -- and that it thereby strongly influences both the construction and the restaurant industries in this city. The indictment identifies the Colombo Family as a criminal enterprise. It states that the Colombo Family operates in New York and other parts of the United States. It sets forth the structure and full range of criminal activities of the Colombo Family. And the indictment charges that, "The Colombo Family used its control of various labor unions to demand and receive payoffs

from employers and prospective employers of members of the various unions and to steal money from the unions. Fear of violence, labor troubles, and disruption of sources of supply induced the employers to pay the sums demanded."

This indictment marks a major advance in our battle against organized crime, a battle now being waged against the "bosses" and "capos" themselves. It is one of the very few times in the history of law enforcement that the entire top echelon of a major organized crime family has been charged in a single federal indictment. Although this case is especially significant because it strikes at organized crime's grip on important commercial endeavors, it is also part of the larger effort. It takes on added importance because of our other major successes in the fight against organized crime recently, including numerous drug and racketeering indictments of top figures and our unprecedented joint operations with Italy against organized crime and drug trafficking.

As I stated yesterday before the President's Organized Crime Commission, at no time in our nation's history have so many leaders of organized crime families been indicted or convicted. Moreover, at no time have so many of these leaders found themselves in prison serving time. During the past four years the leadership of organized crime families in Philadelphia, Detroit, Cleveland, New Orleans, Los Angeles, Kansas City, Milwaukee, and Denver has been immobilized. Syndicates in ten cities have been forced to rely on second-level leadership as a result of our efforts.

The indictment I am announcing today is new and dramatic proof of our success in throwing the full force of law enforcement against the mob -- and using the full range of enforcement tools available to us, including undercover operations and more than 30 court orders approving electronic surveillance. This case results from some three and one-half years of excellent work by the numerous components of the Justice Department -- including the Federal Bureau of Investigation, the Criminal Division, the Organized Crime Strike Force in Brooklyn, and the United States Attorney's Office for the Southern District of New York. We are especially indebted to the New York City Police Department and Commissioner Benjamin Ward for outstanding assistance. The investigation benefited greatly from the coordination and cooperation within the Justice Department and between our Department and the New York City Police Department. To continue the effort with maximum effectiveness, the case will be prosecuted by attorneys from the U. S. Attorneys' Offices in both Manhattan and Brooklyn.

Today's indictment emphasizes that the purpose of the Colombo Family -- like other families in La Cosa Nostra -- is to inspire fear in people outside the Family. It also demonstrates something else: however fearful the aims and practices of the mob may seem, the mob itself has something new to fear from law enforcement. The mob is no longer untouchable. We are pursuing, prosecuting, and imprisoning the leaders of organized crime. And we intend to continue -- and strengthen -- these efforts.

11/6 Class report

* Ching's Resignation case: It asked for response to petition for reh + recon on leave. File on Friday.

* Cong Edwards staff member excluded from NCIC: Crime Info Center. Staffer excluded because someone reported to full comm; wrong rationale. FACA problem; FBI probably wrong.

GAO procurement matter. He advised us to ignore law. (Like bankruptcy.) Will go mostly (Will be formal letter). GAO can hold up K.

10:55 a.m. * FFF advised, 11/6 10:55 a.m.

THE WHITE HOUSE

WASHINGTON

November 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Laker Antitrust Investigation

The Deputy Attorney General will call your office today to set up a meeting with Justice, State, and you on the Justice Department's plans concerning the Laker antitrust investigation. Roger Clegg telephoned me at Mrs. Dinkins's request to let you know why such a meeting must be held. The Department of State would like to hold up Justice's planned indictments to see if the United States and Great Britain can negotiate an agreement on future air fares. Justice considers such a plan an ill-advised intrusion of economic policy planning on the prosecutorial function. Dinkins, Paul McGrath, Ken Dam, Allen Wallis (Under Secretary of State for Economic Affairs), and you would be invited to the meeting. Dam also wants to invite McFarlane but Dinkins would rather not -- you will have to make that call.



U.S. Department of Justice
Office of
The Deputy Attorney General

Washington, D.C. 20530

November 19, 1984

TO: John Roberts
Associate Counsel to the President

FROM: Roger Clegg *RC/lrc*
Associate Deputy Attorney General

Per your request, here are some background materials that may be useful to you regarding OSI and the KGB. As an additional note, Mark Richard said that he thought the VFW itself was split on its resolution (Jewish veterans in particular opposed it); he is not sure that even those who voted for it really understood it.



U.S. Department of Justice

Criminal Division

MMR:CLGittens:be

Typed: 10/23/84

Exec Sec 4100214425

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

Honorable Jeremiah Denton
Chairman
Subcommittee on Security
and Terrorism
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in further response to your letter of September 25, 1984, written on behalf of James P. McDonald of New York and the ~~ter, three~~ Students of the Latvian Center, Three Rivers, Michigan, ~~t-source~~ concerning the use of ~~t~~ Soviet-source evidence by this Department's ~~tions (OSI)~~ Office of Special Investigations (OSI) in the prosecution of Nazi ~~he United~~ war criminals residing in the United States.

~~his letter~~ Mr. McDonald stated in his letter that "[t]he Office of Special Investigations ... has the sole function of ferreting out Americanized refugees of East European origin" and cited as an example the case of United States v. Demjanjuk. He also wrote that "[OSI] refuses to reveal its budget..."

While the overwhelming majority of East European Displaced Persons who came to the United States in the years following the Second World War were law-abiding and decent people (and often themselves victims of persecution), a few have been exposed as Nazi collaborators who engaged in persecution. Most of these latter persons are accused of engaging in acts of persecution in territory now incorporated into the USSR. Any effective investigation of these cases would require examining documents held in Soviet archives and taking the testimony of Soviet citizens who witnessed the events in question.

Let me say most emphatically that there is no special relationship between the KGB and our Office of Special Investigations. In locating and gathering evidence concerning these cases, whether in Soviet territory or any other country in the world, OSI contacts are made through established State

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OSI Chron, 200 HAM

Department channels. Requests for judicial assistance by OSI - to whatever country in the world - are approved and transmitted via the State Department in Washington, D.C., to the cognizant United States Embassy where, in accordance with established diplomatic procedures, the request is forwarded to the host country. Response to the request is returned to OSI through the same established diplomatic channels.

Soviet-supplied evidence used by OSI is, in fact, closely scrutinized and evaluated by the government, defense counsel, and the courts. American procedures and laws provide ample opportunity to uncover fabricated or tainted evidence. Our rules of evidence and procedure provide the safeguards to prevent miscarriages of justice. Soviet-produced evidence in whatever form must pass muster under the strict rules of reliability and veracity that American courts apply to all evidence.

Our courts are well equipped to rule on the concerns raised by Mr. McDonald et al. Indeed, the vast majority of courts which have addressed the use of Soviet-source evidence have confirmed that our reliance on this evidence is not misplaced and that OSI scrupulously follows the letter and spirit of federal rules and procedures.

Many judicial decisions have upheld the government's use of these Nazi Soviet-source evidence in these Nazi war criminal cases; I would like to provide you with several summaries of rulings on this issue expressed by different courts:

United States v. Linnas, 527 F.Supp. 426 (E.D.N.Y. 1981), aff'd, 685 F.2d 427 (2d Cir. 1982), cert. denied, 102 S.Ct. 179 (1982).

Linnas was found to have been the commandant of a concentration camp in Estonia. The trial court relied upon pre-trial photographic identifications made by Soviet witnesses and credited another Soviet witness who mentioned Linnas by name as having been involved in the operation of the camp. Judge Mishler noted that the Soviet testimony was corroborated by documentary evidence that had been scrutinized by an expert document examiner. The defense was unable to come forward with any proof that any of the government's evidence offered at trial, either testimonial or documentary, was incredible or inauthentic in any respect. The Sixth Circuit Court of Appeals affirmed the ruling in all respects and specifically noted that the Soviet-supplied documents and Soviet testimony were properly admissible under our laws of evidence and procedure. Writ of certiorari was denied by the Supreme Court.

United States v. Koziy, 540 F.Supp. 25 (S.D. Fla. 1982),
aff'd February 27, 1984, 11th Circuit, No. 82-5749.

Koziy was stripped of United States citizenship due to his wartime service in the Ukrainian police and membership in a movement hostile to the United States. The district court accepted videotaped deposition testimony and documents provided by the Soviet Union. Defendant challenged the Soviet evidence in his appeal but the circuit court rejected his argument, ruling that the Soviet documentation was fully admissible under the Federal Rules of Evidence.

United States v. Demjanjuk, 518 F.Supp. 1362 (N.D. Ohio 1981), aff'd 680 F.2d 32 (6th Cir. 1982), cert. denied. 102 S.Ct. 447 (1982).

Demjanjuk was found to have been a guard at the Treblinka death camp and was stripped of United States citizenship. The district court relied upon documents provided by the Soviet Union, the originals of which were examined by experts who found nothing to suggest that they were forged. At no time during the trial was any evidence introduced to substantiate defense ~~the decision~~ ~~speculations of forgery~~. The decision was affirmed in all ~~court refus~~ ~~respects~~ and the Supreme Court refused to review the decision.

Osidach, 513 F.Supp. United States v. Osidach, 513 F.Supp. 51 (E.D. Pa. 1981).

United States v. Palciauskas, 559 F.Supp. 1294 (M.D. Fla. 1983).

In both of the aforementioned cases, the courts specifically ruled that the deposition testimony taken in the Soviet Union was taken in conformity with the Federal Rules of Civil Procedure and therefore admissible. Likewise in both cases, the courts found that the presence of Soviet procurators did not impede or flaw the depositions. In Osidach, the defendant himself authenticated Soviet-supplied documents.

In their letter, the Students of the Latvian Center referred to United States v. Kungys and quoted an excerpt from the decision in that case to illustrate a point. For your information, the Kungys court also held that the government was "substantially justified" in relying upon "written protocols or statements" supplied by Soviet officials in initiating and prosecuting the case. 575 F.Supp. 1210. Judge Debevoise also concluded "that notwithstanding its loss of the [Kungys] case, the government was substantially justified in instituting and prosecuting it." 575 F.Supp. 1208, 1211 (D.C.N.J. 1983) denial of attorney fees and expenses).

Honorable Jeremiah Denton
Page 4

It might be of interest to you to know that for the seventh consecutive year, the House Committee on the Judiciary has specifically earmarked funds in the authorization bill for the Office of Special Investigations and for fiscal year 1985, the bill authorizes \$3.275 million for OSI. This information has always been given to anyone who asks.

The Attorney General is deeply committed to ensuring that the Department of Justice pursues these investigations with great dedication and vigor. The cost involved is a small price to pay to assure that those who participated in Nazi atrocities (and concealed their past actions from officials when they sought to enter the United States or become citizens) are brought to justice.

Congress expressly directed the Department of Justice to investigate and prosecute these matters and we are carrying out that directive in accordance with sound American prosecutorial practices providing full protection to the accused.

I trust that the foregoing answers your concerns and adequately provides you with sufficient background information to respond to the concerns of Mr. McDonald and the Students of the Latvian Center. Do not hesitate to write if I can be of further assistance.

Sincerely,

Sincerely,

Mark M Richard
Deputy Assistant Attorney General
Criminal Division

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

RECEIVED

OCT 4 1984

STROM THURMOND, S.C., CHAIRMAN

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SUBCOMMITTEE ON SECURITY AND TERRORISM

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25 September 1984

Mr. Robert A. McConnell
Assistant Attorney General for
Legislative Affairs
U.S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Mr. McConnell:

Enclosed please find letters from Mr. James P. McDonald of New York and the students of the Latvian Center in Three Rivers, Michigan, concerning war criminal cases brought against Baltic Americans.

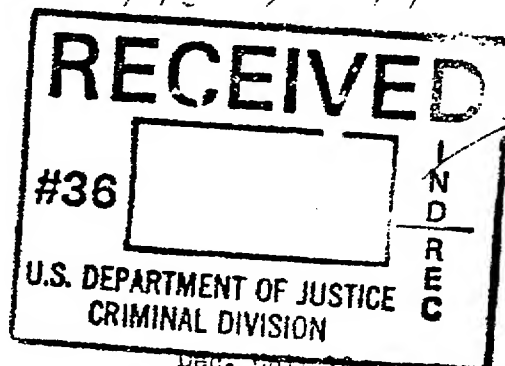
Letters and send you please review the letters and send your findings to my
on Security staff at the Subcommittee on Security and Terrorism, 198
Building. I would appreciate any assistance you can give in this matter.

Sincerely,

Jeremiah Denton
United States Senator

JD:cj

cc: Mr. James P. McDonald
Arvids Bolsteins



Office of Enforcement Operations

August 1, 1984

AUG 02 1984

Hon. Jeremiah Denton
United States Senate
Washington, D.C. 20003

1984 AUG -6 AM 11 51

Dear Senator Denton:

First, please allow me to congratulate you on your very moving book. The painful and harrowing experiences that you related made it difficult for me to read more than one chapter at a time. Nevertheless, it tells a graphic lesson and should be prescribed reading in our schools.

As an ex-WWII Carrier sailor, I am dismayed that we continue to allow our POWs to languish in Viet, Korean and Chinese cages or work camps. If I were one of those men, I would be devastated that my country had forgotten me. In my humble opinion, we should forget the endless diplomatic paper shuffling and get down to what the enemy really understands - Harsh economic sanctions and maneuvers. If it is true that the Russians supplied most of the weapons and tactical know-how to the enemy, then, let us put economic pressure on the Russians, and let them put pressure on their erstwhile allies. I truly believe that the Russian government could not continue to operate without our economic and industrial aid, aside from what they purloin.

At any rate, Senator Denton, my principal reason for writing is to ask for your help in a grave matter that bodes ill for the United States if the problem is not rectified. The Office of Special Investigations, an appendage of the Department of Justice and created during the regime of one James Earl Carter, has the sole function of ferreting out Americanized refugees of East European origin who are alleged to be ex-Nazis, and deporting or extraditing them. I would have no quarrel with the apprehension of these men, now in their '60s, '70s and '80s, if they really were Nazi killers and butchers. However, it is my understanding that the sole authority for these allegations is none other than the Russian KGB Secret Police. For a gross example, in the landmark John Demjanjuk case, recently concluded in Federal District Court, Cleveland, Ohio, the KGB admitted to their falsification of documents utilized by the OSI to bring ex-Ukrainian refugee Demjanjuk to trial. Our "American" Chief Judge in that Court, one Frank Battisti, admitted that he knew that the main accusatory instrument, an identity card, had been deliberately altered and was fraudulent. Yet, astonishingly, he accepted the false card to strip Demjanjuk of his citizenship, and then use the same "evidence" to order him to be deported to Russia. John Demjanjuk's options are now limited to suicide or execution. An Appeal to the Immigration Board is now all that stands between this human-being and his fate.

But, what implications! A precedent has now been established that false evidence, said fraud being known by both Judge-Prosecutor and the Prosecution, is acceptable in a United States Courtroom. I must add that the foundation for this idiocy was established by former Rep. Elizabeth Holtzman, in her infamous "Holtzman Doctrine", which precludes Trial-by-Jury, our most cherished right, for people alleged to be ex-Nazis. I am at a loss as to how she slipped this bill through Congress without one single Congressman challenging it, especially on the question of definitions.

At this point, Senator Denton, I must express my feeling that you are our most patriotic Senator. I say this because of your wartime experiences and your first hand knowledge of our devious enemy; and my reading of your feeling about the sanctity of home, family, church and our beloved country.

Therefore, I take the liberty to ask you: Is it possible for you to call for a Public Hearing on the public scandal known as the OSI? This apparat operates as an authoritarian dictatorship; it refuses to reveal its budget, already described by a South Florida Federal Judge as "incredible"; it refuses to describe its methods of operation; it does admit that it consorts (on a deferential level) with its Masters in Moscow; and, in effect, for all practical purposes, it is a soviet nest planted in the middle of our Department of Justice.

The fact that the OSI is not adverse to the use of hearsay and fraudulent "evidence" to persecute and convict innocent American citizens appalls me. As a citizen, voter, taxpayer and combat veteran, I feel that I have a just right to request a Public Hearing. And, of course, Senator Denton, your power as a United States Senator cannot be ignored or dismissed by this insolent bureau, the Justice Department or the Attorney General.

I am very grateful for your consideration of my request. For corroboration and additional, overwhelming information on these persecution matters, I should like to refer you to Mr. John Demjanjuk's Buffalo Attorney. He is:

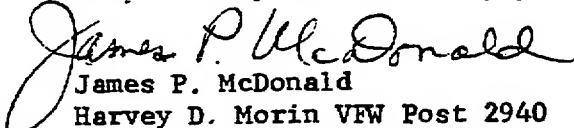
Mr. Mark J. O'Connor
510 Brisbane Building
Buffalo, New York 14203

Bus. Phone: (716) 854-2836; Hours 1 PM till late
Home Phone: (716) 689-0888: (AM)

be happy to provide you with documentation and witnesses to substantiate my statements, and also to aid in the Public Hearing. He will even briefly enlighten your visit to the Russian Embassy where the Russians haughtily and contemptuously admitted to their falsification of Demjanjuk's I.S. card, and his subsequent visit to FBI Headquarters. It is assumed that Mr. Webster turned over his material to the OSI since he has had no communication from the FBI in the past two months.

I should be most grateful for your comments.

Respectfully and sincerely yours,


James P. McDonald
Harvey D. Morin VFW Post 2940
American Legion Post 735

144 Sharon Drive
West Seneca, New York 14224

P.S. My interest in this case, and the OSI, stems from the fact that I worked as an official of the U.S. Displaced Persons Commission in Germany, circa 1950-53. As an investigator, I was and am very sure that we did not approve of immigration applications of ex-Nazis or ex-communists!



/616/
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Bērnū nometne
Ambulance
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LATVIAN CENTER • LATVIEŠU CENTRS
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57732 LONE TREE RD., THREE RIVERS, MI 49093

SUMMER HIGH SCHOOL

After August 22, 1984
c/o Arvids Bolsteins
3425 North 93rd Street
Milwaukee, WI 53222

August 17, 1984

SEP 06 1984

The Honorable Strom Thurmond, Chairman
Committee in the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to express our concern and dismay about an issue within your Committee's jurisdiction that has been increasingly affecting not only the Latvian American community, but other East European ethnic communities throughout the country as well. The U.S. Justice Department, in the pursuit of alleged Nazi war criminals in the U.S., has clearly entered into a deep relationship with certain Soviet institutions in the pursuit of evidence against such persons. That the Soviet KGB plays a dominant role in that relationship would be denied only by those with a false understanding of the Soviet system.

We neither condone nor defend those who rightfully would be found guilty of war crimes based on clear and unprejudiced evidence. Neither, however, can we understand how the Senate and the Administration can condone the Justice Department's reliance on Soviet KGB evidence, whether in relation to this issue or others.

To illustrate from one of the war criminal cases brought against a Baltic American, in September of 1983 in New Jersey, U.S. District Judge Dickinson R. Debevoise stated in his decision on United States vs. Juozas Kungys:

"If the (U.S.) government deputizes a totalitarian state to obtain for it evidence to be used in a United States court, the government must take whatever steps are necessary to ensure that the evidence was not coerced or otherwise tainted by improper pressures. The government has not fulfilled its responsibilities in this case."

We doubt that the above is an isolated example of the Justice Department's methods in these processes. The enclosed articles are only three with which we have become familiar that bear on this issue.

Mr. Chairman, neither the Senate nor the Administration during the past years have taken any steps to investigate the questionable methods used by the Justice Department to gather evidence against the alleged Nazi war criminals. The integrity and credibility of the Department's efforts are comprised by the association with the Soviets. And it hardly does justice to the American legal system.

We, the undersigned, are students at the ethnic Latvian summer high school near Three Rivers in Michigan. It is a summer devoted to learning about past and present Latvian culture and history and about the principles of democracy and justice. While deeply cognizant of our heritage, the values we share as Americans lead us to present these issues to you.

We would be most appreciative of an early response.

Respectfully yours,

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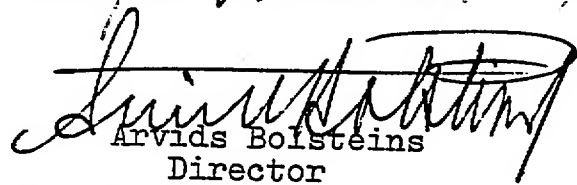
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Arvids Bolsteins
Director
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3425 N. 93rd St. Milwaukee, Wis. 53222



U.S. Department of Justice

Criminal Division

MMR:CLGittens:be

Typed: 7/30/84

Exec Sec #4072012242

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

Honorable Frank R. Lautenberg
United States Senate
Washington, D.C. 20510

Dear Senator Lautenberg:

This is in further response to your letter of June 5, 1984, addressed to the Department of State written on behalf of Arunas Bitenas of the Lithuanian American Community, Inc. regarding the use of Soviet-source evidence by this Department's Office of Special Investigations (OSI) in the investigation and prosecution of alleged Nazi war criminals residing in the United States. Further, your constituent expressed particular concern about the development of "an ominous [KGB-OSI] link." Your letter was referred to this Department for a more comprehensive reply in view of the nature of your inquiry.

Your constituent referred to correspondence you probably received from Attorney S. Paul Zumbakis of Chicago who widely distributed the same material to all members of the House of Representatives, the White House, certain Washington-based media, and selected syndicated columnists. Mr. Zumbakis' goal is to halt the government's use in these cases of documentary and testimonial evidence emanating from the Soviet Union.

Let me say most emphatically that there is no existence of a KGB-OSI special relationship. In locating and gathering evidence concerning these cases, whether in Soviet territory or any other country in the world, OSI contacts are made through established State Department channels. Requests for judicial assistance by OSI - to whatever country in the world - are approved and transmitted via the State Department in Washington, D.C., to the cognizant United States Embassy where, in accordance with established diplomatic procedures, the request is forwarded to the host country. Response to the request is returned to OSI through the same established diplomatic channels. Thus, the "KGB-OSI connection" argument or allegation inferred in your constituent's letter is specious, to say the very least.

146-2-47-P.5

Exec Sec (2), 4416 Main

OLIA (2) 1603 Main

Richard, 2113 Main

Gittens, 200 HAM

OSI Chron, 200 HAM

Honorable Frank R. Lautenberg
Page 2

Our rules of evidence and procedure provide the safeguards to prevent miscarriages of justice. Soviet-produced evidence in whatever form must pass muster under the strict rules of reliability and veracity that American courts apply to all evidence. Our courts are well equipped to comprehend and rule on the issues raised by your constituent. Indeed, the vast majority of courts which have addressed the use of Soviet-source evidence have confirmed that our reliance on this evidence is not misplaced and that OSI scrupulously follows the letter and spirit of federal rules and procedures.

Many judicial decisions have upheld the government's use of Soviet-source evidence in these Nazi war criminal cases, and I would like to provide you here with several summaries typical of rulings on this issue expressed by different courts:

nnas, 527 F.Supp. ~~United States v. Linnas~~, 527 F.Supp. 426 (E.D.N.Y. 27 (2d Cir. 1981)), ~~aff'd~~ 685 F.2d 2427 (2d Cir. 1982), cert. denied, 102 S.Ct. 179 (1982).

have the ~~United States v. Linnas~~ was found to have been the commandant of a concentration camp in Estonia. The trial court relied upon pre-trial photographic identifications made by Soviet witnesses and credited another soviet witness who mentioned Linnas by name as having been involved in the operation of the camp. Judge Mishler noted that the Soviet testimony was corroborated by documentary evidence that had been scrutinized by an expert document examiner. The defense was unable to come forward with any proof that any of the government's evidence offered at trial, either testimonial or documentary, was incredible or inauthentic in any respect. The Sixth Circuit Court of Appeals affirmed the ruling in all respects and specifically noted that the Soviet-supplied documents and Soviet testimony were properly admissible under our laws of evidence and procedure. Writ of certiorari was denied by the Supreme Court.

United States v. Koziy, 540 F.Supp. 25 (S.D.Fla. 1982), aff'd February 27, 1984, 11th Circuit, No. 82-5749.

Honorable Frank R. Lautenberg
Page 3

Koziy was stripped of United States citizenship due to his wartime service in the Ukrainian police and membership in a movement hostile to the United States. The district court accepted videotaped deposition testimony and documents provided by the Soviet Union. Defendant challenged the Soviet evidence in his appeal but the circuit court rejected his argument, ruling that the Soviet documentation was fully admissible under the Federal Rules of Evidence.

United States v. Demjanjuk, 518 F.Supp. 1362 (N.D. Ohio 1981), aff'd 680 F.2d 32 (6th Cir. 1982), cert. denied. 102 S.Ct. 447 (1982).

Demjanjuk was found to have been a guard at the Treblinka death camp and was stripped of United States citizenship. The district court relied upon documents provided by the Soviet Union, the originals of which were examined by experts who found nothing to suggest that they were forged. At no time during the trial was any evidence introduced to substantiate defense speculations of forgery. The decision was affirmed in all respects and the Supreme Court refused to review the decision.

United States v. Osidach, 513 F.Supp. 51 (E.D. Pa. 1981).

United States v. Palciauskas, 559 F.Supp. 1294 (M.D. Fla. 1983).

In both of the above-cited cases, the courts specifically ruled that the deposition testimony taken in the Soviet Union was taken in conformity with the Federal Rules of Civil Procedure and therefore admissible. Likewise in both cases, the courts found that the presence of Soviet procurators did not impede or flaw the depositions. In Osidach, the defendant himself authenticated Soviet-supplied documents.

Congress expressly directed the Department of Justice to investigate and prosecute these matters and we are carrying out that directive in accordance with sound American prosecutorial practices providing full protection to the accused.

Honorable Frank R. Lautenberg
Page 4

I trust that the foregoing answers your concerns and adequately provides you with sufficient background information to respond to the concerns of your constituent. Do not hesitate to write if I can be of further assistance.

Sincerely,

Mark M Richard
Deputy Assistant Attorney General
Criminal Division

June 20, 1984

Dear Senator Lautenberg:

Thank you for your letter of June 5 transmitting the comments of your constituent Arunas Bitenas about the use of Soviet-supplied evidence in American courts in denaturalization cases of American citizens alleged to have committed war crimes during World War II.

Please be advised that the Office of Special Investigations of the Department of Justice was established in 1979 at the request of Congress to seek the denaturalization and deportation of those individuals who are found to have entered the United States and been naturalized by concealing their participation in war crimes. The evaluation of all evidence presented in these cases, whether it originates from domestic or foreign sources, is the responsibility of the Department of Justice and of the courts into which it is introduced. I have therefore taken the liberty of forwarding your inquiry to Mr. Counsel Jack E. Perkins, Legislative Counsel of the Department of Justice for a more comprehensive reply.

If you have any further questions, please contact me again.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosure:

Correspondence Returned

The Honorable
Frank R. Lautenberg,
United States Senate.

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FRANK R. LAUTENBERG
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COMMITTEE ON COMMERCE, SCIENCE,
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COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS

PM 0078-0855

United States Senate

WASHINGTON, D.C. 20510

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June 5, 1984

Department of State
Congressional Relations
2201 C Street
Washington, D.C. 20520

Dear Director:

I am enclosing a copy of a letter I have received
from Arunas Bitenas.

Please provide any information you might have
regarding this issue in order that I might be able to
respond to my constituent's inquiry. Please return the
enclosed correspondence with your report and mark the
envelope to the attention of Tom Dosh.

With best wishes,

Sincerely,

Sincerely,

Frank R. Lautenberg

FRL:tdb
Enclosure

*re: use of Soviet evidence in American courts
to denaturalize Am citizens*

FAIR/IA/P/WI

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JUL 25 1984

U.S. DEPARTMENT OF JUSTICE

Dec. Unit 10
Office of Enforcement Operations

O.S.I.

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yes

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NEW JERSEY APYGARDA

LITHUANIAN AMERICAN COMMUNITY, INC.

DISTRICT OF NEW JERSEY

Hon. Senator: Frank Lautenberg
353 Russell Senate Office Building
Washington, D.C. 20510

May 5, 1984

Dear Senator,

As an American citizen I am deeply outraged about the use of Soviet evidence in American courts to denaturalize American citizens.

I have heard on "Lithuanian World Review Radio" that the Soviet KGB works for the Office of Special Investigations. There is no doubt that this is true, because on March 28th, Chicago attorney Mr. Paul Zumbakis hand delivered to the Senate Office Building documentation of an ominous link that has developed between the Justice Department's Office of Special Investigation and the Soviet KGB.

Why is this? Is America a Communist country? Please look into this situation as soon as possible. What action have you taken to investigate, and correct this matter?

Yours truly,

Arunas Bitenas

Arunas Bitenas....Vice. Pres.
36 Second St.
Elizabeth, N.J. 07206

VFW Wants Investigation Of Federal 'Nazi Hunters'

EXCLUSIVE TO THE SPOTLIGHT

By The SPOTLIGHT Staff
Activities of the Office of Special Investigations (OSI)—the official tax-funded "Nazi-hunters" of the U.S. government—have been protested by the Veterans of Foreign Wars (VFW). A resolution condemning the persecution of naturalized American citizens on "evidence" provided by the Soviet secret police was passed at the VFW's National Convention in Chicago on August 20.

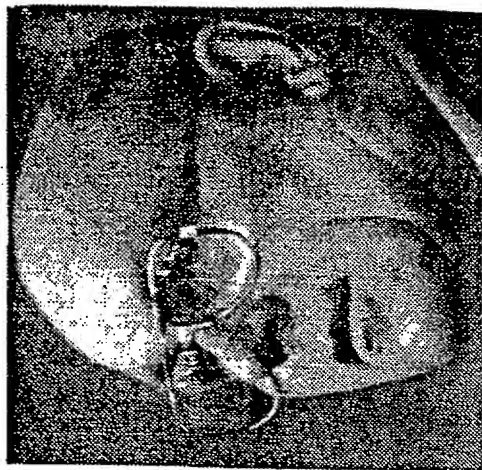
Submitted by James P. MacDonald of West Seneca, New York, a member of VFW Post 2940, the resolution reads as follows:

WHEREAS the Office of Special Investigations, an appendage of the U.S. Department of Justice, was created by President Carter's administration for the purpose of deporting and/or extraditing naturalized American citizens who were formerly refugees from Communism and are now accused of being Nazi collaborators; it is composed primarily of many lawyers and has unlimited financial resources, and

WHEREAS, for the most part, the U.S. press has mysteriously chosen to

maintain a hands-off position "as to publicizing these shameful trials. However, two newspapers, "The SPOTLIGHT," 300 Independence Avenue, SE, Washington, D.C. 20003 and "the Ukrainian Weekly," 300 Montgomery Street, Jersey City, New Jersey 07302, have run a series of articles on these trials and pending trials; a witness who participated in this type of trial in federal court, Westbury, Long Island testified as to the stripping of citizenship and ordered deportation of an aged Estonian refugee who had been Americanized; and a Buffalo attorney, Mark J. O'Connor, 510 Brisbane Building, Buffalo, New York 14203, is defense counsel in the John Demjanjuk trial currently being conducted in federal court, Cleveland, Ohio, and

WHEREAS, the Office of Special Investigations, which henceforth we shall refer to as the OSI, has freely admitted that its chief source for denunciations of American citizens through frequent deferential consultations in Moscow is the Russian [Soviet] Secret Police, also known as the KGB. In effect, the OSI is the willing and subservient, official American government tool of the Russian [Soviet] empire strategically placed in the offices of the U.S. Department of



JOHN DEMJANJUK
... Harassed by OSI.

the federal courts for any violation of the immigration and nationality statutes of the United States, and

BE IT FURTHER RESOLVED, that the United States Senate be petitioned through proper channels, to immediately launch an open inquiry into the entire affairs of the Office of Special Investigations covering all aspects of its activities, both in the United States and external to the United States in such a manner that the American people may be enabled to be thoroughly and completely informed about the Office of Special Investigations and thereby be able to determine whether such activities are in the best security interests of the United States, especially in these troubled times where threats exist that could break the fragile truce now prevailing between free peoples and the leaders of Red totalitarianism.

BE IT RESOLVED that the Veterans of Foreign Wars of the United States request of President Ronald Reagan that an immediate and full inquiry be conducted into the affairs of the Office of Special Investigations to determine whether the civil rights of any persons have been violated, and whether in all instances the full scope of due process in law has been provided to all individuals targeted by, investigated by, or tried by

during World War II, NOW THEREFORE

BE IT RESOLVED that the Veterans of Foreign Wars of the United States request of President Ronald Reagan that an immediate and full inquiry be conducted into the affairs of the Office of Special Investigations to determine whether the civil rights of any persons have been violated, and whether in all instances the full scope of due process in law has been provided to all individuals targeted by, investigated by, or tried by

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U.S. Department of Justice

Criminal Division

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MMR:CLGittens:be

Exec Sec 4082013209

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

SEP 14 1984

Honorable Alfonse D'Amato
100 State Street
Federal Building
Rochester, New York 14814

Dear Senator D'Amato:

This is in further response to your note of August 17, 1984, written on behalf of George Malachowsky regarding this Department's investigation and prosecution of Nazi war criminals by the Office of Special Investigations (OSI). Mr. Malachowsky, who made it quite clear that he objected to the government's use of Soviet-source evidence in these cases, also stated that OSI is working openly with the KGB and has provided ... anarchistic and civil promotion of ethnic hatreds and civil unrest."

First, let me say most emphatically that there is no existence of a KGB-OSI special relationship. As you can imagine, the search for evidence in these cases extends to many parts of the world and many investigations do inevitably lead to the Soviet Union where eyewitnesses live today and where some critical documents can at times be located. As prosecutors, our function is to assess the evidence - including its source - and on the basis of all relevant factors, determine whether it is reliable. If we determine that any piece of documentary evidence is authentic and reliable, we cannot ignore it simply because it is housed in a Soviet archive. Likewise, we cannot dismiss or ignore relevant and credible testimony simply because the witness lives in the Soviet Union.

In locating and gathering this evidence, whether in Soviet territory or any other country in the world, OSI contacts are made through established State Department channels. Requests for judicial assistance by OSI - to whatever country in the world - are approved and transmitted via the State Department in Washington, D.C., to the cognizant United States Embassy where,

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OSI Chron, 200 HAM

in accordance with established diplomatic procedures, the request is passed on to the host country. Response to the request is returned to OSI through the same established diplomatic channels.

Soviet-supplied evidence used by OSI is, in fact, closely scrutinized and evaluated by the government, defense counsel, and the courts. American procedures and laws provide ample opportunity to uncover fabricated or tainted evidence. Our rules of evidence and procedure provide the safeguards to prevent miscarriages of justice. Soviet-produced evidence in whatever form must pass muster under the strict rules of reliability and veracity that American courts apply to all evidence.

Our courts are well equipped to comprehend and rule on the concerns raised by your constituent. Indeed, the vast majority of courts which have addressed the use of Soviet-source evidence have confirmed that our reliance on this evidence is not misplaced and that OSI scrupulously follows the letter and spirit of federal rules and procedures.

Many judicial decisions have upheld the government's use of these Nazi Soviet-source evidence in these Nazi war criminal cases; I would like to provide you here with several summaries typical of those expressed by different courts:

as. 527 F.Supp. United States v. Linnas, 527 F.Supp. 426 (E.D.N.Y. 1981),
aff'd, 685 F.2d 427 (2d Cir. 1982), cert. denied, 102 S.Ct. 179
(1982).

Linnas was found to have been the commandant of a concentration camp in Estonia. The trial court relied upon pre-trial photographic identifications made by Soviet witnesses and credited another Soviet witness who mentioned Linnas by name as having been involved in the operation of the camp. Judge Mishler noted that the Soviet testimony was corroborated by documentary evidence that had been scrutinized by an expert document examiner. The defense was unable to come forward with any proof that any of the government's evidence offered at trial, either testimonial or documentary, was incredible or inauthentic in any respect. The Sixth Circuit Court of Appeals affirmed the ruling in all respects and specifically noted that the Soviet-supplied documents and Soviet testimony were properly admissible under our laws of evidence and procedure. Writ of certiorari was denied by the Supreme Court.

United States v. Koziy, 540 F.Supp. 25 (S.D. Fla. 1982),
aff'd February 27, 1984, 11th Circuit, No. 82-5749.

Koziy was stripped of United States citizenship due to his wartime service in the Ukrainian police and membership in a movement hostile to the United States. The district court accepted videotaped deposition testimony and documents provided by the Soviet Union. Defendant challenged the Soviet evidence in his appeal but the circuit court rejected his argument, ruling that the Soviet documentation was fully admissible under the Federal Rules of Evidence.

United States v. Demjanjuk, 518 F.Supp. 1362 (N.D. Ohio 1981), aff'd 680 F.2d 32 (6th Cir. 1982), cert. denied. 102 S.Ct. 447 (1982).

Demjanjuk was found to have been a guard at the Treblinka death camp and was stripped of United States citizenship. The district court relied upon documents provided by the Soviet Union, the originals of which were examined by experts who found nothing to suggest that they were forged. At no time during the trial was any evidence introduced to substantiate defense speculation of forgery. The decision was affirmed in all but refused respects and the Supreme Court refused to review the decision.

United States v. Osidach, 513 F.Supp. 51 (E.D. Pa. 1981).

United States v. Palciauskas, 559 F.Supp. 1294 (M.D. Fla. 1983).

In both of the aforementioned cases, the courts specifically ruled that the deposition testimony taken in the Soviet Union was taken in conformity with the Federal Rules of Civil Procedure and therefore admissible. Likewise in both cases, the courts found that the presence of Soviet procurators did not impede or flaw the depositions. In Osidach, the defendant himself authenticated Soviet-supplied documents.

In his letter, Mr. Malachowsky refers to a speech he attended in Rochester, New York, presented by Mr. Neal M. Sher, Director of our Office of Special Investigations. Your constituent says that he "found [Mr. Sher] ready and willing to do a good job on Ukrainians with his vengeance, arrogance and total rudeness." Mr. Sher vividly recalls that speech in Rochester and can assure you that while he is a strong advocate of OSI and its mission, at no time did he cast aspersions upon Ukrainian or any other ethnic groups.

Honorable Alfonse D'Amato
Page 4

Congress expressly directed the Department of Justice to investigate and prosecute these matters and we are carrying out that directive in accordance with sound American prosecutorial practices providing full protection to the accused.

I trust that the foregoing adequately provides you with sufficient background information to respond to the concerns of your constituent. Do not hesitate to write if I can be of further assistance.

Sincerely,

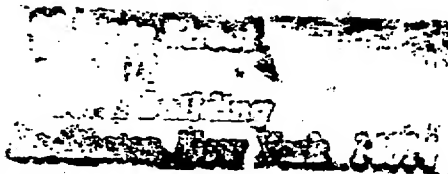
Mark M Richard
Deputy Assistant Attorney General
Criminal Division

RECEIVED

1984

CRIMINAL DIVISION

United States Senate



August 17, 1984

Respectfully referred to:

Department of Justice
Congressional Liaison
Constitution and 10th Street, N.W.
Washington, D.C. 20530

C. 20530

146-2-47

146-2-47

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested. Your findings and views, in duplicate form, along with return of the enclosure, will be appreciated by

S.J.B.

Sec. Unit 10
Office of Enforcement Operations

O.S.I.

W. J. Conate
U.S.S.

Form #2

George Malachowsky
60 Edmonds St.
Rochester, N.Y. 14607

The Honorable Alfonso D'Amato
Senate Office Building
Washington, D.C. 20510

Dear Senator D'Amato:

I have no quarrel with the aims of the Office of Special Investigations (OSI). Nazi war criminals should be ferreted out and brought to justice. But I do take issue with the use of Soviet-supplied evidence in American courts against members of a nation (or nations) that is staunchly anti-Soviet. Thus I am very dissatisfied with Neal Sher, head of Justice Department's Office of Special Investigations OSI.

In explaining his position on the use of Soviet-supplied evidence against Ukrainians and Baltic peoples, Neal Sher argues that Soviet-supplied documents and depositions are essential to the prosecution and deportation, in his considered opinion, they are unimpeachable. I suppose it would be like asking a Klansman to bring evidence against a Black. Incidentally, I did meet with Neal Sher when he came to Rochester as a guest speaker, and found him ready and willing to do a good job on Ukrainians with his vengeance, arrogance and total rudeness.

The authenticity of Soviet-supplied documents, whether original or certified copies must also be closely examined. While Mr. Sher has been to Moscow six times (If one is not in accord with the wishes of Moscow, then he would never be there six times), and doing a pas de deux with the Soviets, the U.S. State Department has issued a report about Soviet disinformation rife with examples of duplicity, outright forgery and fabrication of materials.

As bounty hunters with a federal license and unlimited public funds, the O.S.I. is now acting with the plenary power of the United States government. Working openly with the Russian Committee for State Security, the O.S.I. has provided official route paved for Russian intrigue, disinformation and fraud as well as anarchistic promotion of ethnic hatreds and civil unrest.

During our time, and especially during the second World War, there was an ethnological war going on in the Soviet Empire. This encompassed the non-Russian aspirations for freedom and self-determination vs. the relentless assault on freedom by the imperial Russians. This was the secret and hidden war which was the basis of World War Two. The aspirations for national liberation from Muscovites resulted in the formation of the Ukrainian Division, Baltic legions, the Turkestanian Division, the Cossack legions, Byelorussian brigades, etc.

Those who survived the secret war of liberation from the Russians, came to the United States under a displaced persons act. Others not so fortunate were sent back to Stalin for "REPATRIATION".

Many of these patriots came to the United States under the Displaced Persons Act in order to escape the tyranny of forced repatriation after Yalta. They have been loyal citizens for decades as well as outspoken opponents of Russian despotism in any form, be it Marxism, Sovietism, Monarchism, Russification.

Today, These patriots are under violent attack by the U.S. Tax-funded arm of the Committee for State Security, and the O.S.I. and its quite work under the Holtzman Doctrine.

Therefor, Sir, I strongly urge you to create a commission of inquiry to illuminate the quiet work of the Office of Special Investigation, and in particular the Soviet-supplied evidence from the Office of the Procurator of the U.S.S.R. and the Soviet Committee for State Security.

Very truly yours,
George Malachouky

P. S. The Russian K & B is working
to create ethnic hatreds, especially
people to discredit people who know
the truth regarding the true and
real history of the "Russian Empire"